IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

Joan Spivey,

Plaintiff,

v. **Case No. 04-2285-JWL**

Sprint/United Management Company,

Defendant.

MEMORANDUM & ORDER

Plaintiff Joan Spivey, proceeding pro se, filed suit against defendant asserting claims under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. In Count II of her complaint, plaintiff, on behalf of herself and other "similarly situated" individuals, purports to assert a collective action pursuant to 29 U.S.C. § 216(b). Pursuant to Federal Rule of Civil Procedure 12(c), defendant now moves for judgment on the pleadings with respect to Count II of the complaint on the grounds that plaintiff, as a pro se litigant, is prohibited from maintaining a claim on behalf of other individuals. Plaintiff has not filed a response to defendant's motion to dismiss within the time period provided in D. Kan. Rule 6.1(e)(2). Regardless of plaintiff's failure to respond, however, the court grants defendant's motion on the merits.

A motion for judgment on the pleadings under Rule 12(c) is treated as a motion to dismiss under Rule 12(b)(6). *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138, 1160 (10th Cir. 2000). The court will dismiss a cause of action for failure to state a claim only when "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his [or her]

claims which would entitle him [or her] to relief," *Poole v. County of Otero*, 271 F.3d 955, 957 (10th Cir. 2001) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)), or when an issue of law is dispositive. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, and all reasonable inferences from those facts are viewed in favor of the plaintiff. *Smith v. Plati*, 258 F.3d 1167, 1174 (10th Cir. 2001). The issue in resolving a motion such as this is "not whether [the] plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511 (2002) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

As mentioned above, plaintiff appears in this case pro se. In Count II of her complaint, she purports to assert a collective action under the ADEA on behalf of herself and "others similarly situated." Under established Tenth Circuit precedent, plaintiff is entitled to bring his own claims to federal court without counsel, but not the claims of others. *See Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000) (citing 28 U.S.C. § 1654; 7A Wright, Miller & Kane, *Federal Practice and Procedure* § 1769.1 & n.12 (2d ed. 1986) (citing cases for rule that "class representatives cannot appear pro se")). As the Circuit explained in *Fymbo*, a pro se litigant may not bring the claims of others because "the competence of a layman is 'clearly too limited to allow him to risk the rights of others.'" *See id.* (quoting *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975)) (affirming Rule 12(b)(6) dismissal of class action complaint filed by pro se plaintiff).

In sum, plaintiff's pro se status mandates the dismissal of Count II of her complaint.

Defendant's motion is granted.

IT IS THEREFORE ORDERED BY THE COURT THAT defendant's motion for judgment on the pleadings with respect to Count II of plaintiff's complaint (doc. 8) is granted.

IT IS SO ORDERED.

Dated this ___30th ___ day of December, 2004, at Kansas City, Kansas.

s/ John W. Lungstrum

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John W. Lungstrum
United States District Judge